

Rosenman

ROSENMAN & COLIN LLP

1300 19TH STREET, N.W.
WASHINGTON, D.C. 20036

TELEPHONE: (202) 463-4640

FACSIMILE: (202) 429-0046

WEB SITE: <http://www.rosenman.com>

March 20, 1997

DOCKET FILE COPY ORIGINAL

William F. Caton, Acting Secretary
Federal Communications Commission
Washington, D.C. 20554

NEW YORK OFFICE
575 MADISON AVENUE
NEW YORK, NY 10022-2585

NEW JERSEY OFFICE
ONE GATEWAY CENTER
NEWARK, NJ 07102-5397

SPECIAL COUNSEL
JEROLD L. JACOBS

Re: MM Docket Nos. 96-7 and 96-12
(Banks, Redmond, The Dalles, and Corvallis OR)


Dear Mr. Caton:

Enclosed for filing on behalf of our clients, American Radio Systems License Corp. ("ARS"), licensee of Station KBBT-FM (formerly KDBX), Banks, Oregon, and Madgekal Broadcasting, Inc. ("MBI"), licensee of Station KFLY(FM), Corvallis, Oregon, are an original and eight (8) copies of their "Joint Request for Approval of Agreement" ("Joint Request") in the two above-referenced FM channel rulemaking proceedings.

By letter to the Chief of the Mass Media Bureau's Allocations Branch, dated March 19, 1997, ARS and MBI advised that they would be filing the Joint Request today and asked that further action in the referenced proceedings be held in abeyance until the Joint Request was filed and the Commission had an opportunity to rule on it. The parties hereby renew their abeyance request in light of the fact that, if approved by the Commission, their Joint Request (and underlying Agreement) will resolve their differences in such a way that all participants in the two proceedings can receive either a new, improved, or equivalent FM allotment. Surely such a "global solution" is in the paramount public interest.

Please direct any communications or inquiries concerning this matter to the respective undersigned ARS and MBI counsel.

Very truly yours,


Howard J. Braun
Jerold L. Jacobs

COUNSEL FOR AMERICAN RADIO SYSTEMS
LICENSE CORP.


Matthew H. McCormick
COUNSEL FOR MADGEKAL BROADCASTING, INC.

Enc.

cc: As on Certificate of Service

William F. Caton, Acting Secretary
March 20, 1997
Page 2

bc: Michael Milsom, Esq.
Donald Bouloukos
Dave McDonald (all w/enc.)

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b),	)	MM Docket No. 96-7
Table of Allotments,)	
FM Broadcast Stations)	
(Banks, Redmond, and Corvallis, Oregon)	)	RM-8732
)	
and)	
)	
Amendment of Section 73.202(b),	)	MM Docket No. 96-12
Table of Allotments,)	
FM Broadcast Stations)	
(The Dalles and Corvallis, Oregon)	)	RM-8741
)	
and)	
)	
In re Application of)	
)	
MADGEKAL BROADCASTING, INC.	)	File No. BPH-960206IE
Station KFLY(FM), Corvallis, Oregon)	
)	
For Construction Permit to Modify)	
Licensed Facilities (One-Step Upgrade))	
)	
To: Chief, Allocations Branch		
Mass Media Bureau		

JOINT REQUEST FOR APPROVAL OF AGREEMENT

American Radio Systems License Corp. ("ARS"), licensee of Station KBBT-FM (formerly KDBX), Banks, Oregon,¹ and **Madgekal Broadcasting, Inc. ("MBI")**, licensee of Station KFLY(FM), Corvallis, Oregon, by their respective attorneys, hereby request approval of their "Agreement" (attached hereto as Exhibit A) and, consistent therewith, modification of MBI's above-captioned one-step upgrade application (File No. BPH-960206IE), grant of the

¹ On July 25, 1996 Common Ground Broadcasting, Inc. ("Common Ground") and ARS consummated the assignment of license of Station KDBX to ARS. See File No. BALH-960412GS. For convenience, since ARS is Common Ground's successor-in-interest, all pleadings filed by Common Ground or ARS will be attributed to ARS, and Station KDBX will be called KBBT-FM.

allotments described below, and termination of this proceeding. In support of this Joint Request, the following is shown:

I. Background

1. The subject rulemaking proceeding in MM Docket No. 96-7 was initiated by Notice of Proposed Rule Making and Order to Show Cause ("Docket 96-7 NPRM"), 11 FCC Rcd 1686 (Mass Media Bur. 1996), following a petition for rulemaking filed by ARS. ARS and Combined Communications, Inc. ("CCI"), licensee of Station KLRR(FM), Redmond, Oregon, filed Joint Comments and Joint Reply Comments supporting: (a) substitution of Channel 298C1 for Channel 298C2 at Banks and the modification of Station KBBT-FM's license accordingly; and (b) substitution of Channel 269C2 for Channel 298C2 at Redmond and the modification of Station KLRR's license accordingly.² The proceeding in MM Docket No. 96-12 was initiated by Notice of Proposed Rule Making and Order to Show Cause ("Docket 96-12 NPRM"), 11 FCC Rcd 1788 (Mass Media Bur. 1996), following a petition for rulemaking filed by LifeTalk Broadcasting Association ("LifeTalk"), which requested the allotment of Channel 268C3 to The Dalles and its reservation for noncommercial educational use.

2. The proposals of ARS, CCI, and LifeTalk are not mutually exclusive with each other. What warrants their consideration in a consolidated proceeding is the Commission's

² The Joint Reply Comments also addressed a counterproposal filed on March 28, 1996 by Hurricane Communications, Inc. ("Hurricane"), which proposed allotting Channel 269C2 to Sun River, Oregon, instead of to Redmond. ARS showed that Channel 224C2 could be allotted to Sun River in lieu of Channel 269C2, and by letter dated May 6, 1996, Hurricane stated (at p. 2) that it "will not raise any objection to the allocation of channel 224C2 to Sun River as proposed by KDBX in place of channel 269C2 as proposed by Hurricane". Hurricane's willingness to accept Channel 224C2 was reiterated in a pleading dated August 20, 1996 and filed in MM Docket No. 96-7, and that resolution of the mutual exclusivity posed by Hurricane's original counterproposal is not affected by this Joint Request.

Public Notice (Report No. 2135, "Petitions for Rulemaking Filed"), released June 5, 1996, which stated that MBI's one-step upgrade FCC Form 301 application was being treated by the Commission as if it were a counterproposal in Dockets 96-7 and 96-12, pursuant to FM Channel and Class Modifications, 8 FCC Rcd 4735, 4739 ¶18 (1993). MBI's application proposes to upgrade Station KFLY from Channel 268C2 to Channel 268C, which is mutually exclusive with the allotment of Channel 269C2 at Redmond and the allotment of Channel 268C3 at The Dalles. However, on July 3, 1996, ARS and CCI filed "Consolidated Joint Counterproposal Reply Comments" demonstrating that, if MBI upgrades Station KFLY to Channel 268C₁, instead of Channel 268C, and if different site reference coordinates are specified for LifeTalk's proposed allotment of Channel 268C3 to The Dalles, a "global solution" results, in which all four participants in the two rulemaking proceedings (ARS, CCI, MBI, and LifeTalk) will receive either a new, improved, or equivalent FM allotment.

3. By the attached Agreement, ARS and MBI have resolved their differences and have agreed to seek the following relief from the Commission:

- (a) Modification of MBI's application to propose that Station KFLY's frequency be changed from Channel 268C2 to Channel 268C1 (instead of Channel 268C);
- (b) Commission approval of: (1) substitution of Channel 268C1 for Channel 268C2 at Corvallis, Oregon without the Commission having to issue an Order to Show Cause to MBI (since MBI agrees to accept that frequency change); (2) substitution of Channel 298C1 for Channel 298C2 at Banks, Oregon; and (3) substitution of Channel 269C2 for Channel 298C2 at Redmond, Oregon (together, "the ARS Substitutions") in this proceeding; and

- (c) Approval of the Agreement, in which ARS agrees to pay MBI \$950,000 as consideration for MBI's expenses in connection with the proposed frequency change of Station KFLY and the preparation, filing, and advocacy of MBI's application, and as additional consideration for agreeing to modify its application to specify Channel 268C1 (instead of Channel 268C).

Importantly, the parties' Agreement does not address LifeTalk's proposed allotment at The Dalles. As with Hurricane's proposal (see footnote 2 above), the approval of this Joint Request does not directly affect LifeTalk's proposal. In other words, if different site reference coordinates are specified for LifeTalk's proposed allotment, a "global solution" results in which all four participants in this consolidated proceeding can receive either a new, improved, or equivalent FM allotment. However, approval of the Joint Request and termination of this proceeding does not dictate a specific result as to LifeTalk's proposal. (As part of the termination of this proceeding, the Commission can accept or reject LifeTalk's proposal as it sees fit.)

II. Approval of the Agreement Is Consistent With Commission Rules and Policies

4. As set forth above, the Agreement contemplates MBI's modification of its application to propose that Station KFLY's frequency be changed to Channel 268C1 (instead of Channel 268C) and the Commission's grant of the ARS substitutions in return for ARS's payment to MBI of \$950,000 as consideration for MBI's expenses in connection with its proposed frequency change and the preparation, filing, and advocacy of MBI's application, and as additional consideration for agreeing to modify its application to specify Channel 268C1. Put differently, as stated in MBI's accompanying pleading (Exhibit B hereto), MBI has simply

agreed to adopt the "global solution" proposed in ARS's July 3, 1996 "Consolidated Joint Counterproposal Reply Comments" and to modify its application accordingly.

5. Most importantly, ARS and MBI specifically agree that said modification of MBI's application is not a request for withdrawal or dismissal of an "expression of interest" in this proceeding within the meaning of §1.420(j) of the Commission's Rules, because: (a) MBI did not file its application as an "expression of interest" in this consolidated proceeding;³ (b) MBI did not intend that its application should or would be treated as related to this proceeding; and (c) since changing Station KFLY's frequency to Channel 268C1 will increase its potential audience from 142,552 persons to 736,398 persons, which is only about 30,000 persons less than the potential audience if Station KFLY's frequency were changed to Channel 268C, that change is no more than a minor modification -- not a "withdrawal" or "dismissal" -- of its application. Similarly, §73.3525 of the Rules, concerning the removal of conflicts between mutually exclusive construction permit "applications" (emphasis added) is not applicable here, because there is only a single application (MBI's) involved. In short, the parties maintain that there is no payment "cap" placed by the Commission's Rules or policies on the unique type of settlement contemplated by the Agreement, and they therefore ask the Commission to approve the proposed \$950,000 payout without examination of any itemization of expenses. Indeed, and most importantly, under Paragraph 3 of the Agreement, the settlement is void unless the Commission approves the entire \$950,000 payment.

³ Indeed, MBI filed its application on the very same day that the Commission released its Docket 96-7 NPRM and seven days before the Commission released its Docket 96-12 NPRM. Thus, MBI obviously had no notice of either proceeding at the time of filing and could not have been "expressing interest" in them.

6. As to the inapplicability of §1.420(j) to the Joint Request, the Commission specifically stated, when adopting that rule in Amendment of Section 1.420, 5 FCC Rcd 3911, 3914, ¶¶'s 26-27 (1990)(emphasis added):

[W]e are limiting the amount and type of consideration that may be paid for the withdrawal of an expression of interest [in an allotment proceeding]....Our intent...has been to deter abuse of our processes, and particularly, to prevent disingenuous filings which delay or obstruct legitimate proposals. An abusive party may ransom the withdrawal of its conflicting filing and thereby profit from abuse of our processes.

In other words, the rule was intended to be directed only against (a) the outright withdrawal -- not the modification -- of (b) an FM channel rulemaking counterproposal or "expression of interest". It is only the rare counterproposal that is capable of being modified, because almost all counterproposals envision moving an FM channel to a different community -- not, as here, merely changing the class of an FM channel in the same community. And an applicant's willingness to modify its one-step upgrade application to accommodate other frequency upgrade proposals in a separate FM channel rulemaking proceeding, which is what MBI has done in the Agreement, surely does not betoken an intent to abuse the allotment process. Indeed, it is clear that MBI's application is only part of this proceeding by operation of law -- namely, FM Channel and Class Modifications, supra, 8 FCC Rcd at 4739 ¶18 -- not by MBI's intent. Under these circumstances, the parties submit that, since MBI's application was not filed in contemplation of this proceeding and was not intended to "abuse" this proceeding (see Exhibit B), it should not be treated as an "expression of interest" herein, and any modification of MBI's application cannot and should not be deemed a "withdrawal" or "dismissal" with a payment cap.

7. Similarly, §73.3525 of the Rules is not intended to limit the well-established Circleville requirement that the proponent (ARS) of a channel change by another licensee (MBI)

in an FM channel rulemaking situation must agree to reimburse said licensee for its expenses incurred in implementing the requested channel change. See FM Table of Allotments (Circleville OH), 8 FCC 2d 159 (1967). The Commission does not require that the licensee's expenses be approved by it as a prerequisite to their payment, and the Commission only becomes involved in reviewing such expenses when the parties are unable to agree upon the matter. See FM Table of Allotments (Othello WA et al.), 6 FCC Rcd 6476 (Mass Media Bur. 1991). In sum, the parties urge that the paramount public interest supports the harmonious "global solution" type of FM rulemaking settlement which the Agreement embodies, the settlement will fail unless the Commission approves the entire proposed consideration for MBI, and there is no Commission rule or policy which precludes Commission approval of the proposed settlement payment under the unique circumstances of this case.

III. Conclusion

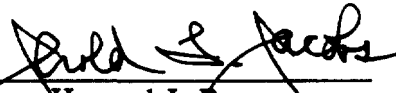
8. The Agreement proposed herein will permit two stations -- KBBT-FM and KFLY -- to upgrade their facilities (and is not inconsistent with allowing LifeTalk to establish a first noncommercial educational station at The Dalles). Commission precedent clearly favors channel allotment resolutions which maximize the number of communities that will have new or upgraded facilities. See Archilla-Marcocci Spanish Radio Co., 101 FCC 2d 522 (Rev. Bd. 1985), rev. denied, FCC 86-271 (Comm'n May 30, 1986) (§307(b) of the Communications Act is better served by granting proposals to serve three communities instead of one). Thus, grant of the Agreement's "global solution" is fully consistent with Commission policy, case precedent, and the paramount public interest, and it should be approved by the Commission.

WHEREFORE, in view of the foregoing, ARS and MBI respectfully ask the Commission to:

- (1) Substitute (a) Channel 268C1 for Channel 268C2 at Corvallis, Oregon without issuing an Order to Show Cause to MBI; (b) Channel 298C1 for Channel 298C2 at Banks, Oregon; and (c) Channel 269C2 for Channel 298C2 at Redmond, Oregon;
- (2) Approve the Agreement, including ARS's payment of \$950,000 to MBI; and
- (3) Terminate the consolidated proceeding.

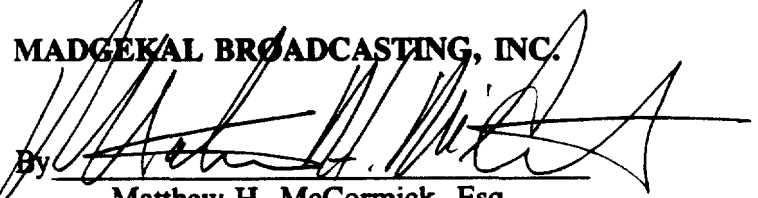
Respectfully submitted,

AMERICAN RADIO SYSTEMS LICENSE CORP.

By 
Howard J. Braun
Jerrold L. Jacobs

ROSENMAN & COLIN LLP
1300 - 19th Street, N.W. Suite 200
Washington, D.C. 20036
(202) 463-4640

Its Attorneys

MADGEKAL BROADCASTING, INC.

By _____
Matthew H. McCormick, Esq.

REDDY, BEGLEY & McCORMICK
1001 22nd Street, N.W.
Suite 350
Washington, D.C. 20037-1803
(202) 659-5700

Its Attorneys

Dated: March 20, 1997

AGREEMENT

Agreement made this 20th day of March, 1997, by and between **American Radio Systems License Corp.** ("ARS") and **Madgekal Broadcasting, Inc.** ("MBI") and (hereinafter referred to as "the parties").

WHEREAS, ARS is licensee of Station KBBT-FM (formerly KDBX), Banks, Oregon, licensed to operate on FM Channel 298C2; and

WHEREAS, MBI is licensee of Station KFLY(FM), Corvallis, Oregon, licensed to operate on FM Channel 268C2; and

WHEREAS, ARS has filed pleadings in FM channel rulemaking proceedings in MM Docket Nos. 96-7 and 96-12 ("the Dockets"), which are currently pending before the Federal Communications Commission ("FCC"), in which ARS proposes, inter alia, that the frequency of Station KBBT-FM be changed from Channel 298C2 to Channel 298C1 and that the frequency of Station KFLY be changed from Channel 268C2 to Channel 268C1; and

WHEREAS, on February 6, 1996, MBI filed a one-step upgrade FCC Form 301 application to change the frequency of Station KFLY from Channel 268C2 to Channel 268C (File No. BPH-960206IE) ("application");

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

1. FCC Approval. This Agreement is expressly entered into subject to the prior approval of the FCC.

2. Joint Request for FCC Approval. The Parties shall file with the FCC, within five (5) business days after execution of this

Agreement, a joint request for approval of this Agreement ("Joint Request"), pursuant to §1.420(j) of the FCC's Rules, seeking the following relief:

- (a) Approval of this Agreement;
- (b) Modification of MBI's application to propose that Station KFLY's frequency be changed from Channel 268C2 to Channel 268C1 (instead of Channel 268C); and
- (c) FCC approval of: (1) substitution of Channel 268C1 for Channel 268C2 at Corvallis, Oregon without the FCC having to issue an Order to Show Cause to MBI (since MBI hereinbelow agrees to accept that frequency change); (2) substitution of Channel 298C1 for Channel 298C2 at Banks, Oregon; and (3) substitution of Channel 269C2 for Channel 298C2 at Redmond, Oregon (together, "the ARS Substitutions") in the Dockets.

3. Consideration. ARS agrees to pay MBI the sum of NINE HUNDRED FIFTY THOUSAND DOLLARS (\$950,000.00) as payment for MBI's legitimate and prudent expenses in connection with the proposed frequency change of Station KFLY and the preparation, filing, and advocacy of MBI's application, and as additional consideration for agreeing to modify its application to specify Channel 268C1 (instead of Channel 268C). At the time of execution of this Agreement and delivery to ARS of the document specified in Paragraph 4 below, ARS shall place NINETY-FIVE THOUSAND DOLLARS (\$95,000.00) in an interest-bearing escrow account for MBI's benefit, the escrow agent for which shall be counsel for ARS.

Counsel for ARS shall provide proof of the establishment of said escrow account to counsel for MBI. Disbursement from said escrow account and payment of the remaining consideration to MBI shall take place by wire transfer within five (5) business days after the date(s) upon which FCC approval of the Joint Request and of the ARS Substitutions have each become a Final Order. An Order shall be final forty (40) days after release of the relevant public notice or full text of the FCC approval, as defined in §1.4 of the FCC's Rules, if no appeal, review, or reconsideration of such approval has been timely requested within that 40-day period and the FCC has not decided to review the approval on its own motion. If an Order denying any of the ARS Substitutions described in Paragraph 2(c) above becomes a Final Order, the escrowed funds and accrued interest shall be returned to ARS and no payment shall be made to MBI.

4. Modification of MBI Application. At the time of execution of this Agreement, MBI will deliver to ARS an executed pleading, in a form acceptable to ARS, informing the FCC that MBI, contingent upon FCC approval of this Agreement, has agreed to adopt the "global solution" proposed in the July 3, 1996 "Consolidated Joint Counterproposal Reply Comments" filed in the Dockets and to modify its application to change Station KFLY's frequency from Channel 268C2 to Channel 268C1 (instead of Channel 268C). This pleading shall be included in the Joint Request. The Parties specifically agree that said modification of MBI's application is not a request for withdrawal or dismissal of MBI's "expression of interest" in the Dockets under §1.420(j) of the FCC's Rules,

because: (a) MBI did not file its application as an "expression of interest" in the Dockets; (b) MBI did not intend that its application should or would be treated as related to the Dockets; and (c) since changing Station KFLY's frequency from Channel 268C2 to Channel 268C1 will increase its potential audience from 142,552 persons to 736,398 persons, which is only about 30,000 persons less than the potential audience if Station KFLY's frequency were changed to Channel 268C, that change is no more than a minor modification -- not a "withdrawal" or "dismissal" -- of its application.

5. Cooperation. The Parties shall cooperate in the diligent preparation and filing of all documents that are necessary or appropriate to secure FCC approval of this Agreement, the Joint Request, and the ARS Substitutions. The Parties shall respond promptly and fully to any requests by the FCC for information relating to this Agreement or to the Joint Request, and agree to provide the FCC with such information within seven (7) days after each such request. Each party shall bear all of its own expenses incurred in connection with preparing, filing, and prosecuting this Agreement and the Joint Request. Each party agrees that it will not file directly or indirectly, or cause or encourage any other person or entity to file directly or indirectly, any petition, objection, or other submission before the FCC which opposes, delays, or impairs FCC approval of the ARS Substitutions.

6. Default and Remedies. If either party, or any of their respective principals, subsidiaries, affiliates or agents, fails to

abide by the provisions of Paragraphs 1 through 5 hereof, the injured party will be free to pursue any and all remedies available to it before the FCC and/or the courts.

7. Authority. Each party hereto warrants and represents that it has full legal authority to enter into, execute, and effectuate this Agreement.

8. Successors and Assigns. Except as otherwise expressly provided herein, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective representatives, successors and assigns.

9. Notices. All notices, demands, and requests required or permitted to be given under the provisions of this Agreement shall be (a) in writing, (b) delivered by personal delivery, or sent by commercial courier service or registered or certified U.S. mail, return receipt requested, postage prepaid, (c) deemed to have been given on the date of personal delivery or the date set forth in the records of the courier service or on the return receipt, and (d) addressed as follows:

If to ARS:	Michael B. Milsom, Vice President American Radio Systems License Corp. 116 Huntington Avenue Boston, MA 02116
------------	------------------------------------------------------------------------------------------------------------------------

with a Copy to:	Jerold L. Jacobs, Esq. Rosenman & Colin LLP 1300 19th St., N.W. Suite 200 Washington, D.C. 20036
-----------------	--------------------------------------------------------------------------------------------------------------

If to MBI:	Mario Pastega, President Madgekal Broadcasting, Inc. 2786 N.E. Belvue Street Corvallis, OR 97333
------------	-----------------------------------------------------------------------------------------------------------

with a Copy to: Matthew H. McCormick, Esq.
Reddy, Begley & McCormick
1001 22nd Street, N.W.
Suite 350
Washington, D.C. 20037-1803

or to any other or additional person and/or addresses as the parties may from time to time designate in a writing delivered in accordance with this Paragraph.

10. Headings. The headings contained in this Agreement have been inserted for the purposes of convenience only and shall be given no effect in the construction or interpretation of this Agreement.

11. Governing Law. This Agreement and all questions relating to its validity, interpretation, performance, and enforcement shall be governed by and construed in accordance with the laws of the State of Oregon (without regard to the choice of law provisions thereof) and the Communications Act of 1934, as amended, and the rules, regulations and policies promulgated thereunder.

12. Entire Agreement. This Agreement constitutes the full and entire understanding between the parties and all of the terms and conditions agreed upon with respect to the subject matter hereof. This Agreement cannot be amended or modified except by a written instrument executed by both parties.

13. Severability. Should any provision herein be held by any court of competent jurisdiction to be invalid or unenforceable for any reason, it shall be deemed modified to the extent necessary to cause such court to consider it valid or enforceable or, if such modification is not possible, it shall be deemed deleted from this

Agreement but, in either case, all other provisions contained in this Agreement shall remain in full force and effect.

14. Execution and Counterparts. This Agreement may be executed in counterparts, all of which together, so executed, shall constitute one and the same instrument. This Agreement shall come into effect upon the exchange of executed signature pages by the legal counsel of the parties. The date of such exchange of executed signature pages shall be deemed the date of execution of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the day and year first above written.

AMERICAN RADIO SYSTEMS
LICENSEE CORP.

By: Michael B. Wilson
Michael B. Wilson
Vice President

NADGERAL BROADCASTING, INC.

By: _____
Mario Pastega
President

Agreement but, in either case, all other provisions contained in this Agreement shall remain in full force and effect.

14. Execution and Counterparts. This Agreement may be executed in counterparts, all of which together, so executed, shall constitute one and the same instrument. This Agreement shall come into effect upon the exchange of executed signature pages by the legal counsel of the parties. The date of such exchange of executed signature pages shall be deemed the date of execution of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the day and year first above written.

**AMERICAN RADIO SYSTEMS
LICENSEE CORP.**

By: _____
Michael B. Wilson
Vice President

MADONAL BROADCASTING, INC.

By:  _____
Mario Pastaga
President

BEFORE THE

Federal Communications Commission

WASHINGTON, D. C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b),	)	MM DOCKET NO. 96-7
Table of Allotments,	)	RM-8732
FM Broadcast Stations)	
(Banks, Redmond and Corvallis, Oregon))	
)	
and)	
)	
Amendment of Section 73.202(b),	)	MM DOCKET NO. 96-12
Table of Allotments,	)	RM-8741
FM Broadcast Stations)	
(The Dalles and Corvallis, Oregon))	
)	
and)	
)	
In re Application of)	
)	
MADGEKAL BROADCASTING, INC.	)	File No. BPH-960206IE
Station KFLY(FM), Corvallis, Oregon)	
)	
For Construction Permit to Modify)	
Licensed Facilities (One-Step Upgrade))	
)	
To: Chief, Allocations Branch		
Mass Media Bureau		

CONSENT TO MODIFICATION

Madgekal Broadcast, Inc. ("MBI"), licensee of Station KFLY(FM), Corvallis, Oregon, herein agrees, contingent upon Commission approval of the agreement between American Radio Systems License Corp. ("ARS") and MBI dated March 20, 1997 ("the Agreement"), to:

(1) adopt the "global solution" (also known as "Alternative 3") proposed in the July 3, 1996 "Consolidated Joint Counterproposal Reply Comments," filed in MM Docket Nos. 96-7 and 96-12 ("The Dockets") and

(2) amend the above-referenced Station KFLY one-step upgrade application to specify operation on Channel 268C1, instead of Channel 268C.

Upon approval of the Agreement, MBI waives issuance of an Order to Show Cause for change of Station KFLY's frequency to Channel 268C1.

For the reasons set forth in the Joint Request for Approval of Agreement, MBI urges the Commission to approve the Agreement. MBI's modification application was filed in good faith and not for the purpose of entering into a settlement agreement. At the time MBI filed its application, it was completely unaware of the proposal of Common Ground Broadcasting, Inc. ("Common Ground"), the predecessor in interest of ARS, to modify the allotments for Stations KBBT-FM, Oregon Banks, Oregon (formerly KDBX) and Station KLRR(FM), Redmond, Oregon or of LifeTalk Broadcasting Association to allot Channel* 263C3 to The Dalles, Oregon. Indeed, MBI and its counsel became aware of the conflict between the KFLY modification application and the Banks/Redmond and The Dalles allotment proposals only after the release of the Commission's Public Notice of June 5, 1996 (Report No. 2135) reporting that conflict.

For many months prior to the execution of the KFLY modification application on January 15, 1996,¹ MBI had been investigating and contemplating filing a modification application to move KFLY's transmitter site to Vineyard Mountain (the site specified in the above-captioned application) and to significantly upgrade its facilities. Indeed, as early as June 1994, MBI commissioned and received a spacing study to determine whether KFLY could file a one-step upgrade application to operate as a Class C station from a site on Vineyard Mountain.

Neither the filing of the KFLY modification application nor the submission of the settlement agreement between ARS and MBI constitutes an abuse of the Commission's processes. To the contrary, the parties have found themselves inadvertently in conflict with each other. Because of the importance to each party of the objectives originally sought, ARS and MBI have reached an accommodation which fairly compensates MBI for accepting, on a permanent basis, somewhat reduced facilities from those originally sought. MBI respectfully urges the Commission to expeditiously approve the Agreement.

MADGEKAL BROADCASTING, INC.

By 

Matthew H. McCormick

Its Counsel

Dated: March 20, 1997

Reddy, Begley & McCormick
1001 22nd Street, N.W., Suite 350
Washington, D.C. 20037

¹ MBI's modification application was sent by counsel to the Commission's lock box bank on February 5, 1996, the day before the Notice of Proposed Rulemaking regarding the Banks/Redmond proposal (MM Docket No. 96-7) was released. The Commission's lockbox bank received the application on February 6, 1997.

DECLARATION

I, Mario Pastega, do hereby declare under penalty of perjury, that (1) I am President of Madgecal Broadcasting, Inc., licensee of Station KFLY(FM), Corvallis, Oregon, and (2) that the facts set forth in the foregoing CONSENT TO MODIFICATION are true and correct.

Signed this 20th day of March, 1997.



Mario Pastega

CERTIFICATE OF SERVICE

I, Maria Alvarez-Newsom, do hereby certify that on this 20th day of March, 1997. I have caused to be mailed, or hand-delivered, a copy of the foregoing "Joint Request for Approval of Agreement" to the following:

John A. Karousos, Chief*
Allocations Branch
Policy and Rules Division
Mass Media Bureau
Federal Communications Commission
2000 M Street, N.W., Room 554
Washington, D.C. 20554

Andrew J. Rhodes, Esq.*
Allocations Branch
Policy and Rules Division
Mass Media Bureau
Federal Communications Commission
2000 M Street, N.W., Room 554
Washington, D.C. 20554

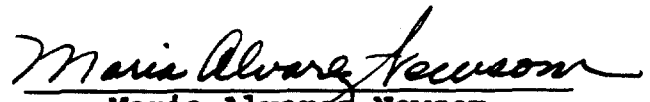
Ms. Leslie K. Shapiro*
Allocations Branch
Policy and Rules Division
Mass Media Bureau
Federal Communications Commission
2000 M Street, N.W., Room 564
Washington, D.C. 20554

J. Dominic Monahan, Esq.
Luvaas Cobb Richards & Fraser,
P.C.
777 High Street
Suite 300
Eugene, OR 97401
COUNSEL FOR COMBINED COMMUNICATIONS, INC.

Roger J. Metzler, Esq.
Keck, Mahin & Cate
One Maritime Plaza
23rd Floor
San Francisco, CA 94111-3577
COUNSEL FOR HURRICANE COMMUNICATIONS, INC.

Donald E. Martin, Esq.
Donald E. Martin, P.C.
P. O. Box 19351
Washington, D.C. 20036
COUNSEL FOR LIFETALK BROADCASTING ASSOCIATION

Matthew H. McCormick, Esq.*
Reddy, Begley & McCormick
1001 22nd Street, N.W.
Suite 350
Washington, D.C. 20037-1803
COUNSEL FOR MADGEKAL BROADCASTING, INC.


Maria Alvarez-Newsom

***BY HAND**